

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

CLERK US DISTRICT COURT
NORTHERN DIST. OF TX
FILED

AS NOV 10 PM 12:46
DEPUTY CLERK

WAYNE H. NORMAN,

Civil Action No.

3 - 16 CV 3149 - C

Plaintiff,

vs.

COTTONWOOD FINANCIAL
LIMITED, d/b/a CASH STORE,

Defendant.

COMPLAINT

NOW Comes the Plaintiff, Wayne H. Norman, by and through himself and for his Complaint against the Defendant, Cottonwood Financial Limited, d/b/a Cash Store, and Plaintiff states as follows:

NATURE OF THIS ACTION

1. Plaintiff brings this action for actual and statutory damages arising out of and relating to the conduct of Cottonwood Financial Limited, d/b/a Cash Store, – (hereinafter, “CFB”), to include all of its affiliates, subsidiaries, and/or related entities, as well as all persons and entities acting on behalf of (CFB), including but not limited to (CFB), in negligently, knowingly, and/or willfully contacting

Plaintiff on his cellular telephone without his prior express consent within the meaning of the TCPA. This is an action for actual and statutory damages for violations of the Telephone Consumer Protection Act (hereinafter, "TCPA"), 47 U.S.C. section 227 *et seq.*¹

2. (CFB), has violated the TCPA by contacting the Plaintiff on his cellular telephone via an "automatic dialing system," as defined by 47 U.S.C § 227(a)(1), without prior express consent within the meaning of the TCPA.

JURISDICTION & VENUE

3. Jurisdiction arises under the TCPA, pursuant to 28 U.S.C. section 1331.

PARTIES

4. WAYNE H. NORMAN, (hereinafter, "Plaintiff"), is a natural person who resides in the county of Cook, state of Illinois.

5. COTTONWOOD FINANCIAL LIMITED, d/b/a CASH STORE, (hereinafter, "Defendant"), is a "for profit" loan company with a corporate address of 1901 Gateway Drive, Irving, TX 75038, and is a "person" as find by 47 USC section 153(39).

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
(TCPA) 47 U.S.C §227

6. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding certain telemarketing practices.
7. The TCPA regulates, *inter alia*, the use of automated telephone equipment, or “predictive-dialers”, defined as equipment which “has the capacity...(a) to store or produce telephone numbers to be called, using a random or sequential number generator; and (b) to dial such numbers. 47 U.S.C. § 227(a)(1). Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.²
8. Per findings by the Federal Communications Commission (FCC), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are nuisances.
9. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.³

² 47 U.S.C. § 227 (b)(1)(A)(iii). ³Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd. 14014 (2003).

10. The TCPA prohibits the use of automatic telephone dialing systems and the prerecorded messages to call wireless devices. § 227(b) prohibits... the use of automated telephone equipment; (1) Prohibitions..." It shall be unlawful for any person within the United States or any person outside the United States if the recipient is within the United States—..."

ALLEGATIONS OF FACT

11. On September 22nd of 2016, Plaintiff inquired about a title loan with Cash Store via the internet. Soon after, Plaintiff was contacted by a Cash Store representative from (817) 402-3041. Plaintiff explained to the representative that he had a "Texas" car title and would that be a problem. The representative informed Plaintiff that he was calling from the corporate office regarding his online application, and that he needed to ask the local store representative that question. Plaintiff thanked the representative and proceeded to call a local store. Plaintiff called (630) 629-8583, a local Cash Store and spoke with a female representative. Plaintiff explained his situation regarding his title and asked her if they could accommodate him. The representative put Plaintiff on hold and spoke to her supervisor. After speaking with her supervisor, the representative came on the line and told Plaintiff that they would not be able to accommodate him. Plaintiff thanked the representative and pursued other means.

12. On September 29th, 2016, Plaintiff received the first of many phone calls from (877) 201-7627. Plaintiff answered the phone and a female representative informed him that she was calling on behalf of Cash Store about his inquiry and asked was he still interested in a title loan. Plaintiff explained to her that he was no longer interested because he had a Texas title and they didn't accept out-of-state titles. The representative told Plaintiff that he was right, thanked him, and hung up. However, the phone calls continued.

13. Plaintiff would answer the calls, here a short pause, a clicking sound, then a prerecorded voice say "Stay on the line" and a representative would come on the line asking for "Wayne Norman." Plaintiff would just hang up.

14. Plaintiff received approximately seven (7) phone calls after telling the first representative that he was no longer needed their services.

15. Upon information and belief, the Defendant's calls utilized interactive voice recognition technology, also known as a predictive dialer, in which a machine places calls, and when a consumer answers the phone there is a noticeable pause prior to being connected to a live representative of Defendant.

16. This technology, upon information and belief, dials several numbers simultaneously and connects the call only to those who answer first.

17. Defendant's telephone calls to Plaintiffs cellular telephone utilizing an "artificial or prerecorded voice" or placed by "an automatic telephone dialing

system" for non-emergency purposes and in the absence of the Plaintiff's prior express consent violated 47 U.S.C. § 227(b)(1)(A).

18. Plaintiff specifically told the Defendant that he had did not need their services yet the phone calls continued.

19. Under the TCPA and pursuant to the FCC's July 2015 Declaratory Ruling, the burden is on Defendant to demonstrate that Plaintiff provided express consent within the meaning of the statue.

20. The Plaintiff incorporates by reference all the above paragraphs of this Complaint as though fully stated herein.

21. Plaintiff suffered harm and damages in the form of invasion of privacy, and harassment due to the continuous unwarranted phone calls, as well as additional data rate charges to his cellular telephone plan.

22. Plaintiff suffered harm and damages in the form of emotional distress such as anger, and resentment each time he received a solicitation phone call from the Defendant.

23. Plaintiff suffered harm and damages in the form of nuisance due to the frequency of the phone calls and the resentment and anger Plaintiff felt because of them.

QUESTIONS OF LAW

24. Questions of law and fact include, but are not limited to, the following:

- a. Whether Defendant made non-emergency calls to Plaintiff's cellular telephone using an automatic telephone dialing system or artificial or prerecorded voice;
- b. Whether Defendants conduct was knowing and/or willful;
- c. Whether Defendant is liable for damages and the amount of such damages.

COUNT I-TCPA

VIOLATIONS OF THE ("TCPA"), 47 U.S.C. § 227, ET SEQ.

23. The Plaintiff incorporates by reference all the above paragraphs of this Complaint as though fully stated herein.

24. The seven (7) phone calls were made to Plaintiff's cellular phone using prohibited equipment without his expressed consent.

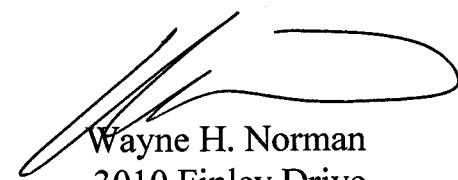
25. Because of Defendants violations of 47 U.S.C. § 227et seq., Plaintiff is entitled to an award of \$500.00 in statutory damages for each call-in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

PRAYER FOR RELIEF

- a) Because of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks statutory damages of \$1500.00 for each call that violated the TCPA;
- b) Because of Defendant's violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks statutory damages of \$500.00 for each call that violated the TCPA;

- c) Actual damages from the Defendant for all damages including emotional distress, data usage, and nuisance as a result of the intentional, reckless, and/or negligent behavior pursuant the TCPA;
- d) A trial by jury on all issues so triable;
- e) Such other and further relief as may be just and proper.

Respectfully submitted,



Wayne H. Norman
3010 Finley Drive
Downers Grove, Illinois 60515
whnorman@hotmail.com

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

WAYNE H. NORMAN

(b) County of Residence of First Listed Plaintiff COOK
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

DEFENDANTS

COTTONWOOD FINANCIAL d/b/a CASH STORE

County of Residence of First Listed Defendant DALLAS

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

8-16CV31 49-C

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	REAL PROPERTY <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	CIVIL RIGHTS PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395F) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
				FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
				<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
				<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act

V. ORIGIN (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from Another District (specify)	<input type="checkbox"/> 6 Multidistrict Litigation - Transfer	<input type="checkbox"/> 8 Multidistrict Litigation - Direct File
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 USC 227**VI. CAUSE OF ACTION**Brief description of cause:
VIOLATION OF THE TELEPHONE CONSUMER REPORTING ACT ("TCPA")**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** **CHECK YES only if demanded in complaint:**

JURY DEMAND: Yes No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/4/16

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE